

Honorable Edward F. Shea

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FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON  
AT SPOKANE

NUVEEN QUALITY INCOME  
MUNICIPAL FUND, INC., et al,

Plaintiffs,

v.

PRUDENTIAL SECURITIES, INC., et  
al,

Defendants,

v.

CITY OF SPOKANE,

Third-Party Plaintiff,

v.

ROY J. KOEGEN, et ux, et al,

Third-Party Defendants,

No. CS-01-0127-EFS

Consolidated with:

No. CS-01-0128-EFS

ANSWER OF RIVERPARK  
SQUARE LLC, RPS II LLC,  
CITIZENS REALTY  
COMPANY, AND LINCOLN  
INVESTMENT COMPANY OF  
SPOKANE TO AGIC  
COMPLAINTS IN  
INTERVENTION

ANSWER OF RIVERPARK, RPS II, CITIZENS, AND  
LINCOLN TO AGIC COMPLAINT - 1

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1 Defendants Riverpark Square LLC<sup>1</sup>, RPS II LLC, Citizens Realty Company,  
2 and Lincoln Investment Company of Spokane (hereinafter "Defendants"), through  
3 counsel, answer the Plaintiff-Intervenor Asset Guaranty Insurance Company's  
4 Complaints in Intervention (the "Complaints") in the consolidated matters of  
5 *Nuveen Quality Income Municipal Fund, Inc., et al. v. Prudential Securities, Inc.,*  
6 *et al.*, No. CS-01-0127, and *U.S. Bank Trust National Association v. Prudential*  
7 *Securities, Inc., et al.*, No. CS-01-0128, as follows.

8 1. Defendants admit that this court has jurisdiction over AGIC's claims  
9 in intervention alleged to arise under the Securities Exchange Act of 1934.  
10 Defendants otherwise deny the averments in paragraph 1.

11 2. Defendants admit that venue lies in this court.

12 3. Answering paragraph 3, Defendants admit that AGIC is an insurer of  
13 municipal bonds with offices in New York. Defendants otherwise lack knowledge  
14

15 <sup>1</sup> AGIC's complaint in Intervention named "RPS MALL LLC" as a party defendant. On August  
16 8, 2001, Plaintiffs Nuveen, et al., were granted leave to amend their complaint to substitute  
17 "River Park Square LLC" for "RPS Mall LLC". The same date, the Court entered an order  
18 permitting intervention by AGIC and consolidating the Nuveen, et al. and U.S. Bank Trustee  
19 complaints, all under a caption including defendant "River Park Square LLC." Accordingly,  
20 River Park Square LLC answers on the assumption that though the Court's order granting leave  
21 to amend was specific and limited to the Nuveen, et al., complaint, the practical effect of the  
22 order on consolidation was to extend that amendment to all pending complaints. Please note  
23 affirmative defenses regarding process, service of process, and statute of limitations.  
24  
25  
26

1 or information sufficient to form a belief as to the truth of the averments in  
2 paragraph 3.

3 4. Answering paragraphs 4-19, Defendants incorporate as if fully set  
4 forth herein its answers to the averments and claims for relief set forth in the  
5 complaints filed by plaintiffs in this matter.

6 5. Answering paragraph 20, Defendants admit that plaintiffs have  
7 brought claims against the defendants in this action, seeking relief as set forth in  
8 plaintiffs' complaints. Defendants deny that AGIC has incurred damages.  
9 Defendants lack knowledge or information sufficient to form a belief as to the truth  
10 of the remaining averments in paragraph 20.

11 6. Defendants deny the averments in paragraph 21.

12 7. Paragraph 22 contains no averments requiring an answer.

13 8. Answering paragraphs 23-34, Defendants admit that Prudential  
14 participated in the preparation of the Preliminary Official Statement and the  
15 Official Statement for the Bonds. Defendants lack knowledge or information  
16 sufficient to form a belief as to the truth of averments regarding the state of mind  
17 of Prudential. Defendants deny that the POS and OS were false and misleading.  
18 Except as specifically admitted herein, Defendants otherwise deny the averments  
19 in paragraphs 23-34.

20 9. Answering paragraph 35, Defendants admit that Foster Pepper acted  
21 as counsel for the underwriter, and that it issued an opinion letter on or about  
22 September 24, 1998. Defendants lack knowledge or information to suggest that  
23 the mental state of Foster Pepper or AGIC was as asserted in paragraph 35.  
24 Defendants lack knowledge or information sufficient to form a belief as to the truth  
25 of the averment that Foster Pepper provided documents to AGIC. Except as  
26 specifically admitted herein, Defendants deny the averments in paragraph 35.

1           10.    Answering paragraph 36, Defendants admit that the Foundation  
2 assisted in the preparation of the POS and the OS and that it issued the bonds.  
3 Defendants lack knowledge or information to suggest that the mental state of the  
4 Foundation or AGIC was as asserted in paragraph 36. Except as specifically  
5 admitted herein, Defendants deny the averments in paragraph 36.

6           11.    Answering paragraph 37, Defendants admit that Preston Gates acted  
7 as issuer's counsel and issued an opinion letter on September 24, 1998.  
8 Defendants lack knowledge or information to suggest that the mental state of  
9 Preston Gates or AGIC was as asserted in paragraph 37. Except as specifically  
10 admitted herein, Defendants deny the averments in paragraph 37.

11           12.    Answering paragraph 38, Defendants admit that Walker issued the  
12 Feasibility Analysis. Defendants lack knowledge or information to suggest that  
13 Walker's mental state was as asserted in paragraph 38. Except as specifically  
14 admitted herein, Defendants deny the averments in paragraph 38.

15           13.    Answering paragraph 39, Defendants lack knowledge or information  
16 to suggest that the mental state of Walker or AGIC was as asserted in paragraph  
17 39. Defendants otherwise deny the averments in paragraph 39.

18           14.    Answering paragraph 40, Defendants deny that they conspired with  
19 the City and Robideaux & Company for any purpose. Defendants lack knowledge  
20 or information sufficient to form a belief as to the truth of the averments regarding  
21 the knowledge or state of mind of the City. Defendants deny the remaining  
22 averments in paragraph 40.

23           15.    Answering paragraph 41, Defendants admit that the City engaged  
24 Auble & Associates and Daniel E. Barrett to provide analyses with respect to the  
25 Garage, and that the analyses were set forth in written reports provided to the City.  
26 Defendants lack knowledge or information sufficient to form a belief as to the truth

1 of the averments regarding the knowledge or state of mind of the City. Except as  
2 specifically admitted herein, Defendants deny the averments in paragraph 41.

3 16. Answering paragraph 42, Defendants admit that the City continued to  
4 proceed with the proposed transaction after having received the reports of Auble &  
5 Associates, Barrett, Coopers & Lybrand, and the Sabey Corporation. Those  
6 reports speak for themselves and Defendants therefore deny the allegations that  
7 purport to characterize those reports. These Defendants lack knowledge or  
8 information sufficient to form a belief as to the truth of the averments in  
9 paragraph 42 regarding the knowledge or state of mind of the City. Except as  
10 specifically admitted herein, Defendants deny the averments in paragraph 42.

11 17. Answering paragraph 43, Defendants admit that the City enacted the  
12 Ordinance on January 27, 1997, and that the Ordinance obligated the City to  
13 provide loans to the Authority in the event that Parking Revenues were insufficient  
14 to make Ground Lease Payments and pay Operating Expenses, all as set forth in  
15 the Ordinance. The Defendants lack knowledge or information sufficient to form a  
16 belief as to the truth of the averments in paragraph 43 regarding the knowledge or  
17 state of mind of the City. Defendants further admit that the City has subsequently  
18 asserted a construction of the Ordinance that is inconsistent with contemporaneous  
19 expressions regarding the construction of the Ordinance, that the City now asserts  
20 that the City Council must vote again to authorize loans to the Authority notwith-  
21 standing that the events triggering the loan obligation have occurred, and that the  
22 City now asserts that it may refuse to make the loans described in the Ordinance.  
23 Defendants deny that at the time of the enactment of the Ordinance or at the time  
24 of the issuance of the Official Statement, the City or any representatives thereof  
25 believed that the defenses that the City is currently asserting to the enforcement of  
26

1 the Ordinance existed. Except as otherwise specifically admitted herein,  
2 Defendants deny the averments in paragraph 43.

3 18. Answering paragraph 44, Defendants admit that City attorney Jim  
4 Sloane issued an opinion letter in connection with the issuance of the Bonds, and  
5 further state that the opinion letter speaks for itself, and denies the averments of  
6 paragraph 44 insofar as they are inconsistent with the text of the opinion letter.  
7 The Defendants lack knowledge or information sufficient to form a belief as to the  
8 truth of the averments regarding the knowledge or state of mind of Sloane or the  
9 City, and as to the averment that the City's Opinion Letter was separately issued to  
10 AGIC. Except as specifically admitted herein, Defendants deny the averments in  
11 paragraph 44.

12 19. Answering paragraph 45, Defendants admit that Perkins Coie LLP  
13 acted as special counsel to the City, and that Perkins Coie issued an opinion letter  
14 in connection with the issuance of the Bonds. Defendants further state that the  
15 Perkins Coie Opinion Letter speaks for itself, and deny the averments in  
16 paragraph 45 insofar as they are inconsistent with the text of the Perkins Coie  
17 Opinion Letter. The Defendants lack knowledge or information sufficient to form  
18 a belief as to the truth of the averments in paragraph 45 regarding the knowledge or  
19 state of mind of the City, and as to the averment that the Perkins' Opinion Letter  
20 was provided to AGIC. Except as specifically admitted herein, Defendants deny  
21 the averments in paragraph 45.

22 20. Defendants deny the averments in paragraph 46.

23 21. Defendants deny the averments in paragraph 47.

24 22. Answering paragraph 48, Defendants admit that the Authority  
25 participated in the operation of the Garage. Defendants further state that the  
26 Authority controls all essential functions related to operating the Garage including

1 hours of operating, rates charged to patrons, and maintenance of the facilities.  
2 Defendants lack knowledge or information to suggest that the Authority's mental  
3 state was as asserted in paragraph 48. Except as specifically admitted herein,  
4 Defendants deny the averments in paragraph 48.

5 23. Answering paragraph 49, Defendants repeat their answers to the  
6 preceding paragraphs of the AGIC Complaints and incorporate them herein by  
7 reference.

8 24. Defendants deny the averments in paragraphs 50 through 58.

9 25. Answering paragraph 59, Defendants repeat their answers to the  
10 preceding paragraphs of the AGIC Complaints and incorporate them herein by  
11 reference.

12 26. Answering paragraphs 60 through 76, Defendants admit that  
13 Prudential acted as underwriter with respect to the Bonds, that Foster Pepper acted  
14 as underwriter's counsel, assisted in the preparation of the POS and the OS, and  
15 issued an opinion in connection with the issuance of the Bonds, that Walker issued  
16 the Feasibility Analysis, that Preston Gates served as bond counsel to the  
17 Foundation and issued an opinion in connection with issuance of the Bonds; that  
18 the Authority leased the Garage and subleased the ground from the Foundation;  
19 that the City caused the Ordinance to be enacted, that Jim Sloane issued an opinion  
20 letter in connection with the issuance of the Bonds, and that Perkins Coie issued  
21 the Perkins Coie Opinion Letter. Defendants otherwise deny the averments in  
22 paragraphs 60 through 76.

23 27. Answering paragraph 77, Defendants repeat their answers to the  
24 preceding paragraphs of the AGIC Complaints and incorporate them herein by  
25 reference.

26 28. Defendants deny the averments in paragraphs 78 through 82.



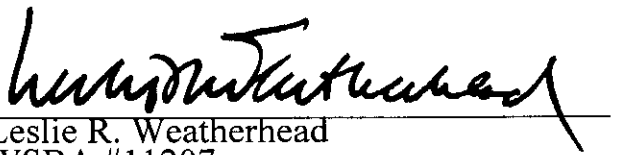


1 B. Judgment against AGIC for Defendants' costs and expenses incurred in  
2 the defense of the claims in the Complaints, including reasonable attorneys' fees;


3 C. Such other and further relief as the Court deems just based upon the law  
4 and the evidence.

5 DATED this 12<sup>th</sup> day of December, 2001.

6  
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9 RPS II LLC

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